

CHAPTER 3

ENVIRONMENTAL REVIEW REQUIREMENTS

Introduction

The purpose of the environmental review process is to analyze the effect the proposed project will have on the people and the natural environmental components within the project area.

Units of local government who are grantees of CDBG funds must complete an environmental review of all project activities prior to obligating CDBG funds. This requirement also applies to projects funded with CDBG-generated Program Income (PI).

This chapter will cover the environmental regulations that must be followed on all CDBG funded projects. Definitions, forms and step-by-step instructions on how to complete the environmental reviews are provided within this chapter. Environmental forms and additional resources are provided as separate attachments to this chapter.

Section 1 - Background and Responsibilities

Applicable Regulations

The rules and regulations that govern the environmental review process can be found under 24 CFR Part 58, Subparts A-H. For a quick reference:

- Subpart A: Defines the purpose of an environmental review and the legalities associated with its completion.
- Subpart B: Specifies the roles and responsibilities of those performing the review and the State's oversight responsibilities.
- Subpart C: Identifies limitations on obligating project funds prior to completion of the environmental review process.
- Subpart D: Requires aggregation of related activities and classifies project activities into four levels of review.
- Subpart E: Explains the steps involved with the preparation of the environmental assessment and circumstances requiring re-evaluation of the original environmental findings.
- Subpart F: Deals with the use of existing environmental impact statements for a proposed action.
- Subpart G: Explains the process associated with the preparation of the environmental impact statement.

- Subpart H: Explains the steps associated with securing a release of funds, and the oversight responsibilities of the State and grantees of HUD assistance.

Responsible Party

- Grantee: The unit of local government that is a recipient of CDBG grant funds or that administers CDBG PI.

In order to carry out its environmental review responsibilities, the grantee should designate two responsible parties:

- Certifying Officer: The responsible entity (i.e., CDBG grantee) must designate a certifying officer---the “responsible federal official”---to ensure compliance with the National Environmental Policy Act (NEPA) and the federal laws and authorities cited at Part 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.
- Environmental Officer: The funding grantee should designate an Environmental Officer. This person is the grant administrator or the consulting engineer. This person would sign all NEPA documents as the “Preparer”. The Environmental Officer will be responsible for writing project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the grantee is responsible for:

CDBG funds may not be obligated for construction activities prior to receiving approval from the State. Grantees and participants in the development process who fail to adhere to environmental requirements may have all project costs disallowed. Grantees may be required to reimburse the State for any CDBG funds expended.

1. Ensuring compliance with NEPA and the federal laws and authorities has been achieved;
2. Issuing the public notification;
3. Submitting the request for release of funds, when required; and,
4. Ensuring the Environmental Review Record (ERR) is complete.

Common Acronyms

CEQA	California Environmental Quality Act
CFR	Code of federal Regulations
EA	Environmental Assessment
EFF	Environmental Finding Form
EIS	Environmental Impact Statement
EO	Executive Order
ERR	Environmental Review Record
FOSI	Finding of Significant Impact
FONSI	Finding of No Significant Impact
NEPA	National Environmental Policy Act
MOU	Memorandum of Understanding
NOI/RROF	Notice of Intent to Request Release of Funds
OHP	Office of Historic Preservation
PA	Programmatic Agreement
PI	Program Income
RE	Responsible Entity
RER	Rehabilitation Environmental Review
RROF	Request for Release of Funds
SHPO	State Historic Preservation Officer

Environmental Review Record

Each CDBG grantee must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative costs and tenant-based rental assistance. This written record or file is called the Environmental Review Record (ERR) and must be available for public review. Environmental Review Records maintained electronically must be in compliance with the requirements of 24 CFR Part 58.38 which states: “*The responsible entity must maintain a written record of the environmental review undertaken... for each project. This document will be designated the ‘Environmental Review Record’ (ERR)...*” Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR Part 58.35 (i.e., an individual, organization or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee’s computer or a private network). However, CDBG staff still require a hard copy to be submitted for review.

The ERR must contain the following documents and parts:

- Description of the project and each of the activities comprising the project, regardless of individual activity funding source. To the extent

A preliminary environmental review including source documentation must be conducted prior to contacting applicable agencies for comment. Agencies must be provided sufficient project information, maps, and source documentation to make a determination of compliance with applicable laws.

feasible, grantees are encouraged to conduct and neighborhoods rather than limiting the environmental assessment to just the activity being proposed or to the streets being addressed within a neighborhood. The review should include all potential activities and phases of investment planned in the future. The ERR must also contain written determinations and other review findings (e.g., exempt and categorically excluded determinations, findings of no significant impact), and public notices, when required. The ERR shall also contain documentation that verifies compliance with NEPA and the federal laws and authorities cited in compliance checklists, Environmental Assessments (EA) and Environmental Impact Statements (EIS);

- Documentation of compliance with federal laws and authorities;
- Documentation of compliance with the NEPA, when applicable;
- Notices, when applicable; and,
- Public comments received.

Public comments, concerns and appropriate resolution by the grantee must be completed prior to requesting release of funds from the State, and must be fully documented in the ERR.

The ERR will vary in length and content depending upon the level of review required (based upon the types of project activities).

Keep in mind that, on the average, an EA for a project usually takes at least 90 days to complete.

Grantees must carry out and document completion of the prescribed procedures for compliance with NEPA. Depending on the complexity of the project, these procedures can be time-consuming. Jurisdictions might consider the option of hiring (through proper procurement methods) a consultant or consulting firm that specializes in environmental reviews.

Incurring Costs

Expenditures for activities that are exempt from NEPA per Part 58.34 (i.e., general administration, environmental review, planning, engineering and design work, etc.) may be incurred after the date of the grant award letter. The exempt activities must be documented as such in the environmental review record. Grantees must submit a letter to the State requesting approval to begin incurring such expenses prior to executing the Standard Agreement. Upon receiving State approval, grantees may begin incurring costs for these activities. ***However, grantees should be aware that they are proceeding at their own risk, and that CDBG expenditures will not be reimbursed until after the CDBG Standard Agreement has been executed and all special conditions have been cleared.***



Grantees must use the most recent HUD NEPA forms for submittal of all environmental reviews. These forms are posted as separate links on the home page for this Chapter. If you submit documentation on NEPA forms from any other agency besides HUD, you will not be in compliance with CDBG regulations and will have to re-submit all documentation on the proper forms, and also complete additional

environmental reviews which could set your schedule back a considerable amount of time, or cause the rejection of your entire project! Likewise, CEQA forms are also unacceptable since CDBG does not monitor for CEQA compliance.

Environmental review requirements apply to all CDBG funded activities, including “10 percent Set-Aside” activities and projects funded with PI.

Section 2 - Actions Triggering Environmental Review, Limitations Pending Clearance and Project Aggregation

Actions Triggering the Requirements at 24 CFR Part 58

Once a grantee has submitted an application for CDBG funds to the State, Part 58 requirements are applicable to the project. At this point, the grantee (and any other project participants) must cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the review and the determination of environmental clearance.

Where a grantee (or other project participant) has begun a project in good faith as a private project, the State is not precluded from considering a later application for federal assistance for the project, but the third party must cease further actions on the project until the environmental review process is completed. Grantees may proceed with the project upon receiving approval from the State, after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58, such as hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions. If you have any question as to whether a specific activity may be permitted without risking a violation, consult with your CDBG Representative.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant’s own funds or any source of funds, prior to obtaining environmental clearance to use CDBG funds. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. These actions interfere with the State’s ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the federal laws and authorities and the standard review procedures that ensure compliance.

Limitations Pending Environmental Clearance/Choice-Limiting Actions

According to the NEPA (40 CFR 1500-1508) and Part 58, the State is required to ensure that environmental information is available before decisions are made and before actions are taken. Grantees may not commit or expend resources, either public or private funds (CDBG, other federal or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or

construction pertaining to a specific site until environmental clearance has been achieved. In other words, grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made---that decision being based upon an understanding of the environmental consequences, and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).

In order to achieve this objective, Part 58 prohibits the commitment of CDBG funds by the State or its grantees until the environmental review process has been completed and CDBG staff release of funds approval has been received, when required. Moreover, until the grantee has completed the environmental review process (and until receipt of CDBG clearance), neither the grantee nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives.

For the purposes of the environmental review process, “**commitment of funds**” includes:

- Execution of a legally binding agreement (e.g., a property purchase or construction contract);
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact (e.g., demolition, dredging, filling or excavating); and,
- Use of non-CDBG funds on actions that would be “choice limiting” (e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures; conversion of land or buildings/structures).

Project Aggregation

The environmental review must identify and address the physical, social and economic impacts of the entire proposed activity. The environmental review process must consider the ultimate effect of a proposed project, including the potential effects of all aspects of the development, whether funded through CDBG or through other funding sources. For example, if CDBG funds are being used to extend a water line to a site for a new residential development or manufacturing plant, then the ultimate effect of the project is not only the new water line, but also the new residential development or plant. Therefore, the environmental review must address the impacts of both the CDBG-funded water line, as well as the development of the new residential units or plant. The scope of an environmental review encompasses this definition of a project.

While the definition of activity under the CDBG program refers only to the project costs paid for by grant funds, the definition of activity under NEPA refers to the entire scope of onsite and offsite development as a result of CDBG involvement, irrespective of the source of funding.

Section 3 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the Environmental Review process, funding grantees, including grantees using CDBG PI, must first determine the environmental classification of each activity of the project. The term “project” can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the CDBG grantee, subgrantee or a public or private entity in whole or in part to accomplish a specific objective. If the various activities have different classifications, the grantee must follow the review steps required for the most stringent classification. This chapter will focus upon the four environmental classifications that are recognized under the CDBG program:

- Exempt Activities;
- Categorically Excluded Activities;
- Activities Requiring an Environment Assessment; or,
- Activities Requiring an Environmental Impact Statement.

Determining the classification is the responsibility of the CDBG grantee. To do this, the Environmental Officer must list all of the activities associated with the project, review the information contained within this chapter and match each activity to the appropriate classification.

Occasionally, projects funded under the CDBG program entail more than one activity. For example, a new wastewater treatment plant project would have both administrative and construction related activities. The administrative activities would be considered exempt, where as the construction related activities would require an EA or possibly an EIS.

Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the grantee adequately addresses and analyzes the separate and combined impacts of a proposed project.

The following table has been developed to assist with the classification of activities. However, the funding grantee is advised to read the regulations listed under the exempt, categorically excluded (“subject to” or “not subject to” Part 58.5) and EA activity sections of this chapter for more detail.

<i>Activity</i>	<i>Classification</i>
Acquisition/Disposition	Categorically Excluded Subject to Part 58.5
Clearance (Demolition)	Categorically Excluded Subject to Part 58.5 or EA
Water and Sewer Improvements	Categorically Excluded Subject to Part 58.5 or EA

<i>Activity</i>	<i>Classification</i>
Supplemental Assistance to a Previously Approved Project	Categorical Excluded Not Subject to Part 58.5
Flood and Drainage Facilities Improvements	Categorically Excluded Subject to Part 58.5 or EA
Street Improvements	Categorically Excluded Subject to Part 58.5 or EA
Parks, Playground and Other Recreational Facilities--Improvements	Categorically Excluded Subject to Part 58.5 or EA
Public Facility Rehabilitation	Categorically Excluded Subject to Part 58.5 or EA
Public Facility New Construction	EA
Relocation Payments and Assistance	Exempt
Rehabilitation – Residential	Categorically Excluded Subject to Part 58.5 or EA
Rehabilitation – Commercial	Categorically Excluded Subject to Part 58.5 or EA
Planning and Technical Assistance	Exempt
General Administration	Exempt
Economic Development Assistance to Non-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Part 58.5
Economic Development Assistance to For-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Part 58.5
Single Family Housing Construction	Categorically Excluded Subject to Part 58.5 (under certain conditions) or EA

Exempt Activities

For the activities listed below, NEPA requirements and related federal laws and authorities under Part 58.5 are not applicable, because they do not directly affect any actual environmental conditions, and are therefore exempt. However, **requirements under Part 58.6 are applicable** as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered **Exempt** are:

- Environmental and planning *studies*.
- General *administrative* costs.
- *Payment of costs for eligible public services that will not have a physical impact or result in any physical changes*, including but not limited to services addressing employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
- *Inspections and testing of properties for hazards and defects*.
- *Preliminary and final engineering and design costs* incurred for an eligible State CDBG program activity.
- *Technical assistance and training*.
- *Assistance for temporary or permanent improvements* that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary *only to control or arrest the effects from disasters or imminent threats to public safety* including those resulting from physical deterioration.
- Activities that are Categorically Excluded and subject to Part 58.5, but have converted to Exempt. (i.e., activities that had no secondary findings for any review factor on the Statutory Worksheet).

Environmental Forms Required for Submittal to CDBG for Approval:

1. A completed *Environmental Finding Form*, indicating “Exempt”.
2. A completed *Statutes & Regulations Form*, Part 58.6.

Categorically Excluded from NEPA and Not Subject to Part 58.5

For the activities listed below, NEPA requirements and related federal authorities under Part 58.5 are not applicable (i.e., categorically excluded) because the activities would not alter any conditions that would require a review or compliance determination under the federal laws and authorities cited in Part 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the grantee does not have to submit a RROF to the State. The exception is when the responsible entity determines that an activity or project identified in Paragraph (a) or (b) of Part 58.5, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect.

Again, **requirements under Part 58.6 are applicable** as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Categorically Excluded Not Subject to Part 58.5 are:

- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating costs and similar costs *not associated with construction or expansion* of existing operations
- Payment of CDBG eligible operating costs, including maintenance, furnishings, security, equipment, operation, supplies, utilities, staff training and recruitment.
- Payment of CDBG eligible supportive service costs, including but not limited to, health care, housing services, permanent housing placement, day care and nutritional services.
- Activities to assist homebuyers to purchase **existing dwelling units** or **dwelling units under construction where the foundation is already in place at the time the buyer applies for assistance**, including closing costs and down payment assistance, interest buy-downs, and similar activities that result only in the transfer of title.
- Affordable housing predevelopment costs.

Environmental Forms Required for Submittal to CDBG for Approval:

An activity determined to be categorically excluded and not subject to Part 58.5 must be documented as such and *does not convert to exempt, but remains excluded*. Prepare and/or keep in your files a copy of each of the following:

1. A completed *Environmental Finding Form* indicating “*Categorically Excluded Not Subject to Part 58.5*”.
2. A completed *Statutes & Regulations Form, Part 58.6*.

Payment of Assessment Fees for TIG Households

Assessment Fees are a tool used to recover the costs of certain capital improvements, such as the upgrading of a water quality or a sewage treatment facility. The payment of assessment fees for TIG households is a CDBG eligible activity that represents an indirect way of paying for these capital improvements.



However, please note: this activity is still considered as public improvements for NEPA purposes and its NEPA level of review must be based on the type of public improvement being undertaken. **NOTE:** Assessment Fees are never an Exempt or Categorically Excluded Not Subject to 58.5 activity, even if the project will proceed without the use of CDBG funds. Furthermore, NEPA clearance must be obtained from the Department before any work on the project can begin.

Categorically Excluded from NEPA Subject to Part 58.5

Categorical exclusion refers to a category of activities for which no EIS or EA under NEPA is required, except in extraordinary circumstances (see Part 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Even though **NEPA requirements are not applicable, the requirements of 24 CFR Part 58.5 are applicable** to projects in this category. For example, although the project is excluded from a full review under NEPA, it may be located in a floodplain and trigger a floodplain and wetlands assessment (see “Flood Insurance Requirements and 8-Step Process” in the attachments to this chapter). Or a project may involve rehabilitating homes or disturbing the ground and, therefore, be subject to historic preservation requirements.

Requirements under 24 CFR Part 58.6 are also applicable as they pertain to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zones and Clear Zones Disclosures.

Activities considered Categorical Excluded Subject to Part 58.5 are:

- The acquisition, reconstruction, rehabilitation or installation of CDBG eligible public works and improvements when the facilities and improvements are in place and will be retained in the same use *with less than a 20% change in size or capacity* (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- Special projects directed to the *removal of material and architectural barriers that restrict mobility of and accessibility to elderly and handicapped persons.*
- The rehabilitation of buildings and improvements when the following conditions are met:
 - For a residential building with one to four units:
 - The density is not increased beyond four units;
 - The land use is not changed; and,
 - The footprint of the building is not increased in a floodplain or in a wetland.
 - For multifamily residential buildings (5 or more units):
 - Unit density is not changed more than 20 percent;
 - There are no changes in land use from residential to non-residential; and,
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - For non-residential structures:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and,
 - The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

- An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between (This does not apply to the rehabilitation of a building for residential use with one to four units).
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- Acquisition of an existing structure provided that the structure acquired will be *retained for the same use*.
- Combinations of the above activities.

Environmental Procedures

Grantees must document compliance with Part 58.5, either by completing a “**Statutory Worksheet**” *on an individual project* or a “**Rehabilitation Environmental Review**” (**RER**) form for rehabilitation of existing residential structures. These forms contain a listing of all the applicable environmental provisions, including a brief description of the procedures required for compliance and the appropriate federal and /or State agency(s) that should be contacted regarding these procedures.

If you are administering a residential or commercial rehabilitation program, you must write to the State Historic Preservation Officer (SHPO) describing the program and how you will evaluate each unit for historic or archaeological status. Keep your letter and SHPO's response in your environmental review file.



Please note that the **RER Form is for a tiered review**, in which all potential housing rehabilitation projects within the target area are the focus for the environmental clearance. Appendix A of the RER is then completed for each rehabilitation project within that target area as units are identified. It cannot be used for activities involving changes of use, demolition, new construction “reconstruction”, or for the rehabilitation of or acquisition of entire multi-family residential structures.

Reconstructions of Housing Units:

Reconstructions of housing units, even if they are part of the grantee's Housing Rehabilitation Program, are treated as separate projects and cannot be a part of the tiered review. As such, they require the completion of a *Statutory Worksheet*, and cannot be reviewed using the RER/Appendix A protocol (tiered review).

If you choose to use the Statutory Worksheet and you have no secondary findings (no B's checked), you may convert the project to exempt status pursuant to 24 CFR Part 58.34 (a)(12):

Environmental Forms Required for Submittal to CDBG for Approval:

1. A completed *Environmental Finding Form*, indicating *Categorically Excluded, per Part 58.35(a)* and *conversion to Exempt*.
2. A completed and documented *Statutory Worksheet* with primary findings only.
3. A copy of *supporting documentation*, including SHPO correspondence where applicable

If you have any secondary findings (B Status) on the Statutory Worksheet;
OR

If you use the RER for rehabilitation:

Environmental Forms Required for Submittal to CDBG for Approval:

1. A completed *Environmental Finding Form* indicating a "*Finding of Categorical Exclusion*".
2. A completed and documented *RER* or *Statutory Worksheet identifying secondary findings*. (Please refer to the Supplemental Guide on Environmental Review Documentation in the attachments to this chapter.)
3. A copy of SHPO correspondence.
4. Proof of *publication* of the *NOI/RROF* notice in a local newspaper of general circulation. If the notice is not published, then it must be prominently displayed in the local post office and in other public buildings as established by the citizen participation process (not recommended when there is not a site specific project). Provide for 7 calendar days after the date of publication of the notice for public comment or 10 calendar days if the notice was not published, but mailed and posted instead.
5. Comments received during the 7-day comment period for newspaper publications or 10-day period for mailed/posted notifications and responses.
6. A completed "*Request for Release of Funds and Certification*" form.

Environmental Assessment (Part 58.36)

If your project is not found to be exempt or categorically excluded from NEPA, an EA will be required. This document is used to evaluate the environmental ramifications of proposed CDBG-funded and related program activities. Depending upon the magnitude and complexity of the proposed project, the EA can lead to two types of clearances or findings. These include a Finding of No Significant Impact (FONSI) or a Notice of Intent to Prepare an EIS, which is further described in the next section.

The preparation of an EA, which leads to a FONSI, will be typical for projects that are not exempt or categorically excluded.

Activities which fall under this category include the following:

- New construction or rehabilitation of public facilities or improvements involving a new facility or system, or increasing the size or capacity of an existing facility or system by more than 20 percent.
- Infrastructure activities in support of a new construction project.
- An individual action (new construction, demolition or acquisition) on a project of 5 or more units when the units are located within 2,000 feet of each other.

Environmental Procedures

Prepare an EA in accordance with 24 CFR Part 58, Subpart E, using the EA to include the grantee name and address, a description of the project and location map, a determination of existing conditions, identification of project impacts with data sources and explanation, a discussion of project alternatives, a discussion of any measures that will be implemented to mitigate project impacts and a discussion of any irreversible project impacts. In addition, the grantee must address, through a narrative description, all the review factors and applicable laws and authorities listed on the EA form.

The EA will result in either a: 1) FONSI; or, 2) Finding of Significant Impact (FOSI) requiring preparation of an EIS.

Finding of No Significant Impact (FONSI):

Most CDBG projects will result in a FONSI as they do not usually constitute major federal actions, or they comprise part of a larger project that has already completed an environmental study.

Environmental Forms Required for Submittal to CDBG for Approval:

1. A completed *Environmental Finding Form*.
2. A completed and documented *Environmental Assessment*.
3. SHPO correspondence.
4. Proof of publication of a combined "*Notice of FONSI and Notice of Intent to Request Release of Funds*". In addition, for all project-specific activities, copies of the FONSI should be sent to adjacent land owners, organizations, and to individuals and groups known to be interested in the activities, the appropriate State, federal and local agencies, the headquarters and appropriate regional office of the Environmental Protection Agency (EPA) and the Department. Submit to the Department the list of parties that received a copy of the FONSI.
5. Comments received during the 15-day comment period for newspaper publications or 18-day period for mailed/posted notifications and responses (or a signed statement indicating that no comments were received within the prescribed period).

6. A completed "*Request for Release of Funds and Certification*" Form.

Submit a copy of each form to the Department for review and approval. After receiving the Request for Release of Funds (RROF) and Certification form, ***the State must allow an additional 15 days to accept any objections to its release of funds and the grantee's certification*** prior to releasing the Authority to Use Grant Funds. The 15-day period begins on the date that the Department receives the RROF or the date identified in the combined Notice, whichever is later. File all documents, including the Authority to Use Grant Funds (once received), in the ERR.


Finding of Significant Impact (FOSI):

If you determine that the CDBG project will have a potentially significant impact on the human environment, then an EIS must be prepared. Please consult with your CDBG representative before proceeding.

Environmental Impact Statement (58.37)

If the EA results in a finding that an activity will have "potentially significant" impact on the human environment, the grantee must publish a notice of intent to prepare an EIS. "Potentially significant" incorporates significant development, regional impact, long-term effects on the environment, violation of existing laws and authorities, or highly controversial development where, in each case, procedural resolution is not feasible.

24 CFR Part 58.37 describes certain types of projects that require an EIS because of their size or nature. For example, the construction, substantial rehabilitation, conversion or demolition of 2,500 housing units requires an EIS; or a water or sewer project with the capacity to support 2,500 new units also requires an EIS.

 Projects funded under the State CDBG Program rarely require an EIS since State CDBG activities usually do not constitute a "major federal action" or they are a small part of a large project for which a full environmental review has already been completed. However, if your project meets the thresholds for EIS or your EA results in a FOSI, consult with your CDBG representative regarding the preparation of an EIS.

Section 4 – Five-Year NEPA Clearance for Housing Programs

When completing the tiered review process (such as housing rehabilitation activities), grantees may request a clearance for **5-years** – the maximum allowable period according to HUD. However, for this clearance to be obtained from the state CDBG Program, the following items are required:

1. The ERR must clearly show a consistent statement within all documents that the Grantee will be operating the program for a 5-year period. This information must be included in the Public Notice and be stated in all the other NEPA forms (Finding Form, Level of Environmental Determination, RER, as well as the RROF and Certification).
2. The Notice of Intent to Request Release of Funds (NOI/RROF) should address all CDBG funds that could be expended during that 5-year period. The grantee must make a reasonable approximation of any potential CDBG grants (for the activity in question) and/or CDBG PI (for the activity in question) that might be received within the 5-year period.
3. The NOI/RROF and the RER forms should include the maximum number of units to be assisted during the 5-year period.
4. The grantee should not take any action that could be determined to be a Choice Limiting Action until they have received the “Authority to Use Grant Funds” form (HUD-7015.16) signed by either the State CDBG Section Chief or Program Manager. *Reference: 24 CFR Part 58.22 (a) and (b).*
5. For any future grant applications that the grantee applies for under this activity, the grantee will need to submit the “Authority to Use Grant Funds” form as evidence that they have the appropriate environmental clearance.

Section 5 – Consultation with the State Historic Preservation Officer (SHPO)

The historic preservation review of a proposed activity is known as the **Section 106** process as part of the National Historic Preservation Act. The federal Regulations on protection of historic properties can be found at 36 CFR Part 800. American history, architecture, archeology, engineering and culture are embodied in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and either of the following:

- That are associated with events that have made a significant contribution to the broad patterns of our history;
- That are associated with the lives of persons significant in our past;
- That display the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or


- That have yielded, or may be likely to yield, information important in prehistory or history.

All of the above are reasons that a specific site may have development restrictions placed on it by the SHPO, and close attention must be paid to the Section 106 process.

Grantees must consult with SHPO if there are potentially any historical properties (including archaeological and cultural resources) on the project site or if the project could have an effect on historical properties, including possible historic or archaeological properties not yet identified.

Public involvement is a primary ingredient in successful Section 106 compliance. It is imperative that all affected parties be invited to comment early in the review process and that all historical information from interested sources be documented to determine the reasonable, good faith effort on the part of the Certifying Officer preparing the determination.

For rehabilitation activities, the grantee must evaluate whether the proposed activity will affect a property on or eligible for the National Register of Historic Buildings, and must consult with SHPO prior to making a finding regardless of whether the Rehabilitation Environmental Review Forms or Statutory Worksheet are used.

 For vacant sites, the California Historical Resources Information System (CHRIS) is the primary source of information regarding cultural resources that may be located in the soils. The website is www.chris.ca.gov. The CHRIS system will perform a records search of the area surrounding the subject property and advise on the “likelihood” of the presence of cultural or historic resources on the site.

The Advisory Council on Historic Preservation has formalized the review period. Requests for comment to the SHPO must receive a response within 30 days of receipt of the request. Requests for comment should be sent certified mail. If the SHPO fails to respond to an “adequately documented finding” within that review period, compliance with Section 106 is complete. ***An adequately documented finding is one for which the grantee has completed the research necessary to make a determination prior to formally consulting with the SHPO.*** If the information is inadequately documented, SHPO is allowed an additional 30 days to respond to a re-submittal. Grantees are strongly advised to become familiar with SHPO procedures and requirements, and carefully follow the documentation standards in 36 CFR Part 800.

Descriptions and photographs of structures to be affected by rehabilitation should be submitted to the SHPO for review as part of the environmental review procedures. Consultation with the SHPO can be made during preparation of the Statutory Worksheet or RER; however, each structure must be evaluated on a case-by-case basis using the Appendix A protocol.

Information on documentation of properties and use of the Criteria for Evaluation may be obtained by writing: National Register of Historic Places, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, or accessing the Advisory Council on Historic Preservation at www.achp.gov which includes the Section 106 Users Guide.

Programmatic Agreements

Per 36 CFR Part 800.14, (4) (b), SHPO and the grantee may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from multiple undertakings. This type of agreement is common and recommended for Housing Rehabilitation Programs where, due to the tiered review process, the potential effect on historic properties cannot be determined at the onset of the program.

When to Consult SHPO for Housing Programs:

With Letter of Understanding or Programmatic Agreement with SHPO attached								
Age	Exterior work	Consult?						
<i>50+ years</i>	Yes	Yes						
<i>50+ years</i>	No	No						
<i>Under 50 years</i>	Yes	No						
<i>Under 50 years</i>	No	No						
Without Letter of Understanding or Programmatic Agreement with SHPO attached								
Age	Exterior work	Consult?						
<i>50+ years</i>	Yes	Yes						
<i>50+ Years</i>	No	Yes						
<i>Under 50 years</i>	Yes	Yes						
<i>Under 50 years</i>	No	No						
Note: "Consult" means Grantee writes a letter to SHPO and either attach the approval or state that there was no response within 30 days and thus approval is presumed.								

Section 6 – Floodplain Management

If any activity is proposed to take place in a 100-year floodplain (either designated by FEMA or identified using best available information) or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990. This procedure is commonly referred to as the “8-Step Process.” A flow chart depicting the decision making process can be found in the attachments to this chapter. The 8-Step Process must be dated prior to the RROF, and the 8-Step documentation must be submitted to the Department along with all other NEPA review documents.

8-Step Process

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in the base (100 year) floodplain/wetland.

- If the community has been identified as flood-prone by Federal Emergency Management Agency (FEMA), a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
- The maps identified below are published by FEMA. Check the following maps to determine if the project is located within a floodplain:
 - Flood Hazard Boundary Map; and/or,
 - Flood Insurance Rate Map.

If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:

- U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team
- Local Soil Conservation Service District;
- Floodplain Information Reports;
- USGS Flood-Prone Area;
- Topographic quadrangle maps; or,
- State and local maps and records of flooding.

For wetlands, determine the presence or absence of wetlands, including non-jurisdictional wetlands, in accordance with the 1987 *US Army Corps of Engineers (USACE) Wetlands Delineation Manual* (1987 Manual).

Funding grantees should request developers to provide an evaluation by an engineer or hydrologist for areas which are not covered by FEMA or these other sources.

Step 2: Engage Public Comment

After a grantee determines the project is located in a floodplain/wetland, the second step is to involve the public in the decision-making process by publishing a notice in the local newspaper informing the public of the proposal and inviting comments.

- Executive Order (EO) 11988 and 11990 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the floodplain/wetland.
- An acceptable format for the 1st Notice is provided as a separate link under *Additional Resources*. It provides a description of the proposed action with time for meaningful input from the public.

Step 3: Identification and Evaluation of Alternative Locations

The third step involves identification and evaluation of the *practicable alternatives* to locating in the floodplain and/or wetlands. This determination requires the grantee to consider whether the floodplain can be avoided to minimize harm to or within the floodplain by:

- Adoption of an alternative project site;
- Other means which accomplish the same purposes as the proposed project but would minimize harm to or within the floodplain or wetland; or,
- Taking no action.

Step 4: Identify Impacts of Proposed Project

Identify the impacts of the proposed project, including actions occurring outside the floodplain, that will affect the floodplain or wetland. In other words, if the project directly or indirectly includes floodplain development and/or has additional impacts, these additional impacts need to be identified also.

- If negative impacts are identified, methods must be developed to preserve the wetlands environment and reduce or avoid potential harm, as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

Step 5: Minimize Potential Impacts and Identify Methods to Restore and Preserve Beneficial Values

If the proposed project has identifiable impacts (as identified in step 4), the natural wetlands environment must be restored and preserved.

- The concept of minimization applies to harm.
- The concept of restoration and preservation applies only in floodplain/wetland values.
- Methods to be used to perform these actions are discussed in Step 6.

Step 6: Re-Evaluate Project, Implement Actions to Minimize Impacts

At this stage, the proposed project needs to be re-evaluated in relationship to alternatives identified in Step 3, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve floodplain values.

- As a "rule of thumb," if the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain or non-wetland sites practicable.

- If neither is acceptable, the alternative is no action (that is, the project does not go forward).
- If the proposed project is outside the floodplain or wetland but has impacts that cannot be minimized, the grantee should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action
- The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain or wetland. The comparison should emphasize floodplain/wetland values; and a site out of the floodplain/wetland should not be chosen if the overall harm is significantly greater than that associated with the floodplain or wetland site.

If the grantee determines that the original *Finding of No Significant Impact* is no longer valid, the grantee must notify the CDBG Rep and prepare a new Environmental Assessment according to the procedures specified in Section 3.

Step 7: Publish Statement of Findings and Public Explanation

- If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain or wetland, a 2nd Notice (*Statement of Findings and Public Explanation*) must be published in a local newspaper.
- A sample of this second notice is provided as a separate link under *Additional Resources*.
- The grantee may not post the two public notices. These notices are required to be published.
- For Step 7, it is permissible to publish 2nd Notice concurrently with the *Notice of Intent to Request Release of Funds* (related to categorical exclusions that cannot convert to exempt) or Combined Notice of *Finding of No Significant Impact (FONSI)* and *Notice of Intent to Request Release of Funds* (related to an EA). However, it should be made clear that the notices serve different purposes.
- For projects in a floodplain, a copy of the 2nd Notice must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

Step 8: Implement the Proposed Project

Once the proper documentation has been reviewed and published, the project may continue.

- Compliance with EO 11988 and/or 11990 has been achieved through documentation of the “8-Step Process”, and implementation of the conditions for approving the project in the floodplain or wetland. Therefore, this documentation should be placed in the project ERR.

Section 7 – Re-Evaluation of Review Findings

If the size or scope of the CDBG project changes significantly or if the location changes, the grantee must reassess the project's environmental impact and update the ERR. The purpose of the re-evaluation is to determine if the original environmental finding is still valid.

The grantee must re-evaluate its assessment findings in any of the following situations:

- There is change of location or a substantial change or amendment in the nature, magnitude, or extent of a project, including adding new activities not covered in the original project scope.
- There are new circumstances and conditions that may affect the project or have a bearing on its impact on the environment.
- The grantee selects an alternative approach not considered in the original assessment.



If the findings of the *Statutory Worksheet* (categorically excluded) or the FONSI determination is still valid but data or conditions upon which it was based have changed, the grantee must amend its original review and update its ERR by including the re-evaluation and determination based on its findings:

- The narrative or a memorandum to ERR should clearly describe the project and indicate what changes are being made. Include narrative and maps identifying the original and revised project, as applicable.
- Provide the date the original review was completed and whether it converted to exempt or the date of release of funds.
- Identify and discuss the environmental compliance issues (including other requirements at Part 58.6) being affected by the changes and the findings and conclusions reached, with documentation that supports the findings/conclusions. This is best documented via the Statutory Checklist or Worksheet, depending on the level of review.
- Identify any necessary mitigation measures and how they will be incorporated into the project.

- Document whether the original findings are still valid. If they are not, contact CDBG staff.

Copies of all documentation generated through the re-evaluation process must be submitted to CDBG staff. Funds cannot be released unless the new decision is appropriately documented and reported.

Section 8 – Urgent Need

An activity designed to alleviate an existing condition of particular urgency may warrant a modified review process. The condition must pose a serious and immediate threat to the health or welfare of the community, must have occurred or become urgent within the last 18 months, and the grantee must document that it has been unable to finance the activity because the community's other resources have been depleted by the emergency and other federal programs are not sufficient to cover all the costs. Grantees are encouraged to consult with the Department prior to using the Urgent Need provision. The Department's formal approval is required for Urgent Need.

Records must include:

1. A description of the condition, documenting both the timing and the nature and degree of seriousness of the threat;
2. Local certification that the CDBG activity was designed to address the urgent need (i.e., a resolution); and,
3. Evidence that other financial resources are unavailable to alleviate the need.

Certain Categorically Excluded activities may be deemed exempt in emergency situations under Part 58.34(a)(10). Specifically, this clearance level addresses, "*Assistance for temporary or permanent improvements **that do not alter environmental conditions** and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.*" They will follow the recordkeeping requirements for exempt projects as outlined earlier in the chapter and for emergency projects as documented above.

For an activity that, under non-emergency circumstances, would typically require noticing, Part 58.33 applies. If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the NOI/RROF may be disseminated and/or published simultaneously with the submission of the RROF. The combined NOI/RROF shall state that the funds are needed on an immediate emergency basis and that the comment periods have been combined. The notice shall also invite citizens to submit their comments to both HCD and the responsible issuing entity (grantee) to assure that these comments will receive full consideration. However, if the activity will have a significant environmental impact, the grantee must immediately consult with the Department, which will in turn consult with HUD and make alternative arrangements.

Section 9 - Department's Role and Common Problems

Department's Role

The Department is responsible for ensuring that grantees comply with the provisions of NEPA and the related federal laws. To fulfill its responsibilities, the Department will consider any objection to the grantee's RROF and Certification received within 15 days from the day the Department received the RROF. The Department can only deny the RROF based on the following reasons:

- The grantee's Certifying Officer did not execute the RROF and Certification.
- The grantee has failed to make a finding regarding significant impacts of the proposed activity or has failed to make a written determination as required by Part 58.
- The grantee has omitted one or more of the steps set forth for the preparation, publication and completion of the NEPA review.
- **The grantee or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by Part 58, or before receiving an Authority to Use Grant Funds or a clearance letter from the State.**

If the activity involves an effect on a property on, or eligible for, the National Register of Historic Places and the grantee has failed to inform the Advisory Council on Historic Preservation of the effects the activity will have on this property, the Grantee will *not* have met its environmental clearance requirements as required in Part 58 noted above.

The Department's approval of the RROF and Certification satisfies the responsibilities of the Secretary of Housing and Urban Development under NEPA and the related provisions of federal law (24 CFR Part 58.5), and once approved, funds will be released. The grantee's State CDBG representative will be responsible for processing the RROF and Certification and drafting each environmental clearance letter.

For activities that require a formal Request for Release of Funds, the Department will issue an Authority to Use Grant Funds (HUD Form 7015.16) upon clearance of all NEPA requirements.

The Department will monitor the grantee's environmental review procedures to meet the following objectives:

1. To ascertain whether the grantee has complied with all of the procedures of 24 CFR Part 58, the related statutes, executive orders and regulations to determine their applicability to specific projects, and that the environmental review record includes adequate written evidence (documentation) of consultation with and determination by other agencies, as appropriate.

2. To ensure that the grantee has considered the environmental quality of the project and its surroundings in its decision-making and has adequately assessed the project's impacts on the environment and the environment's impact on the project.
3. To ensure that funds have not been expended or committed prematurely.
4. To provide assistance to the grantee in order to remedy any deficiencies in the grantee's environmental review compliance procedures.

By complying with Part 58, the grantee will have complied with the procedural aspects of NEPA, Historic Preservation and all of the related laws, regulations and executive orders as set forth in 24 CFR Part 58.5 and Part 58.6. When the review of procedural compliance and environmental quality indicates deficiencies in the grantee's program, State CDBG staff will work with the grantee to remedy the problem and reduce or eliminate the incidence of such problems in the future. The Department may take formal corrective action as provided for in the State or federal CDBG regulations, which may result in a return of funds.

Common Problems

- Environmental clearance prepared only for the portion of the project paid for with CDBG funds, as opposed to the onsite and offsite work made possible by injection of CDBG funds.
- Site work funded through other sources is performed prior to environmental clearance, resulting in a choice-limiting action which disallows participation with CDBG funds.
- Project funds are obligated or expended prior to receiving environmental clearance from HCD.
- Project is not reviewed at the correct level of clearance.
- The NEPA process is not completed in the correct order.
- Project or program information is not consistent on all NEPA documents/forms.
- Public notices do not contain all required information, or dates for submitting comments/objections are incorrect, or notices have not been disseminated as required in 24 CFR Part 58.43.
- An Environmental Review Record was not established or lacked source documentation.
- Timing of public notices and/or RROF and Certification is incorrect.
- Grantee delays or fails to consult with the State Historic Preservation Officer.
- Someone other than the Certifying Officer signs forms requiring the Certifying Officer's signature.

REFERENCES

- NEPA: 40 CFR Parts 1500-1508
24 CFR Part 58 (Environmental Review Procedures for Title I CDBG Programs)
HCD Act of 1974, Section 104(h)
- Related federal laws and authorities, 24 CFR Part 58.5:
 - (a) Historic Properties:
 - (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.); particularly Section 106 and 110 (16 U.S.C. 470 and 470h-2).
 - (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921); 3 CFR 1971-1975 Comp. p.559, particularly Section 2(c).
 - (3) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly Section 3 (16 U.S.C. 469a-1).
 - (b) Floodplain Management and Wetland Protection:
 - (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951); 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly Section 2(a) of the order.
 - (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p.121, particularly Sections 2 and 5.
 - (c) Coastal Zone Management: The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as amended; particularly Section 307(c) and (d) (16 U.S.C.1456(c) and (d)).
 - (d) Sole Source Aquifers:
 - (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly Section 1424(e) (42 U.S.C. 300h-3(e)).
 - (2) Sole Source Aquifers (Environmental Protection Agency - 40 CFR part 149).
 - (e) Endangered Species: The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly Section 7 (16 U.S.C. 1536).

- (f) Wild and Scenic Rivers: The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly Section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).
- (g) Air Quality:
 - (1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly Section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
 - (2) Determining Conformity of federal Actions to State or federal Implementation Plans (Environmental Protection Agency – 40 CFR parts 6, 51, and 93).
- (h) Farmlands Protection:
 - (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly Sections 1540(b) and 1541 (7 U.S.C. 4201 (b) and 4202).
 - (2) Farmland Protection Policy (Department of Agriculture – 7 CFR part 658).
- (i) HUD Environmental Standards: (24 CFR Part 51) (other than the runway clear zone and clear zone notification requirement in 24 CRE 51.303 (a)(3) and HUD Notice 79-33, Policy guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).
- (j) Environmental Justice: Executive Order 12898 – federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.
- Other requirements, 24 CFR Part 58.6
 - (a) Flood Insurance: Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).
 - (b) Coastal Barrier Resources System: Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501).
 - (c) Runway Clear Zone or Clear Zone: 24 CFR part 51.